IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 791

RONALD L. CRANE, *Petitioner*,

v.

CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Iowa

MOTION OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR LEAVE TO FILE A BRIEF ON THE MERITS AS AMICUS CURIAE, AND ANNEXED BRIEF

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington, D. C. 20005
Attorneys for Railway Labor Executives' Association

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

March, 1969

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

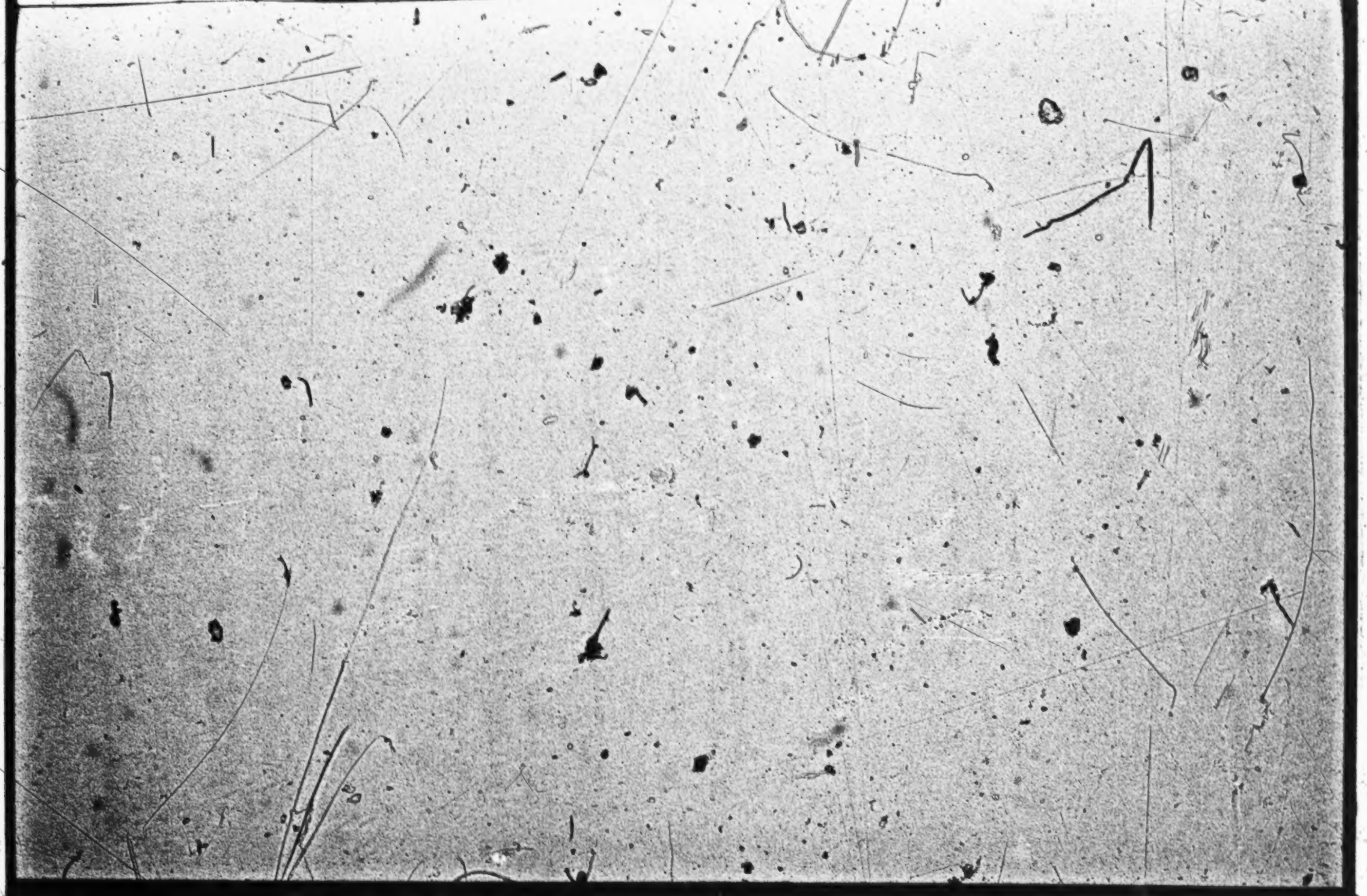
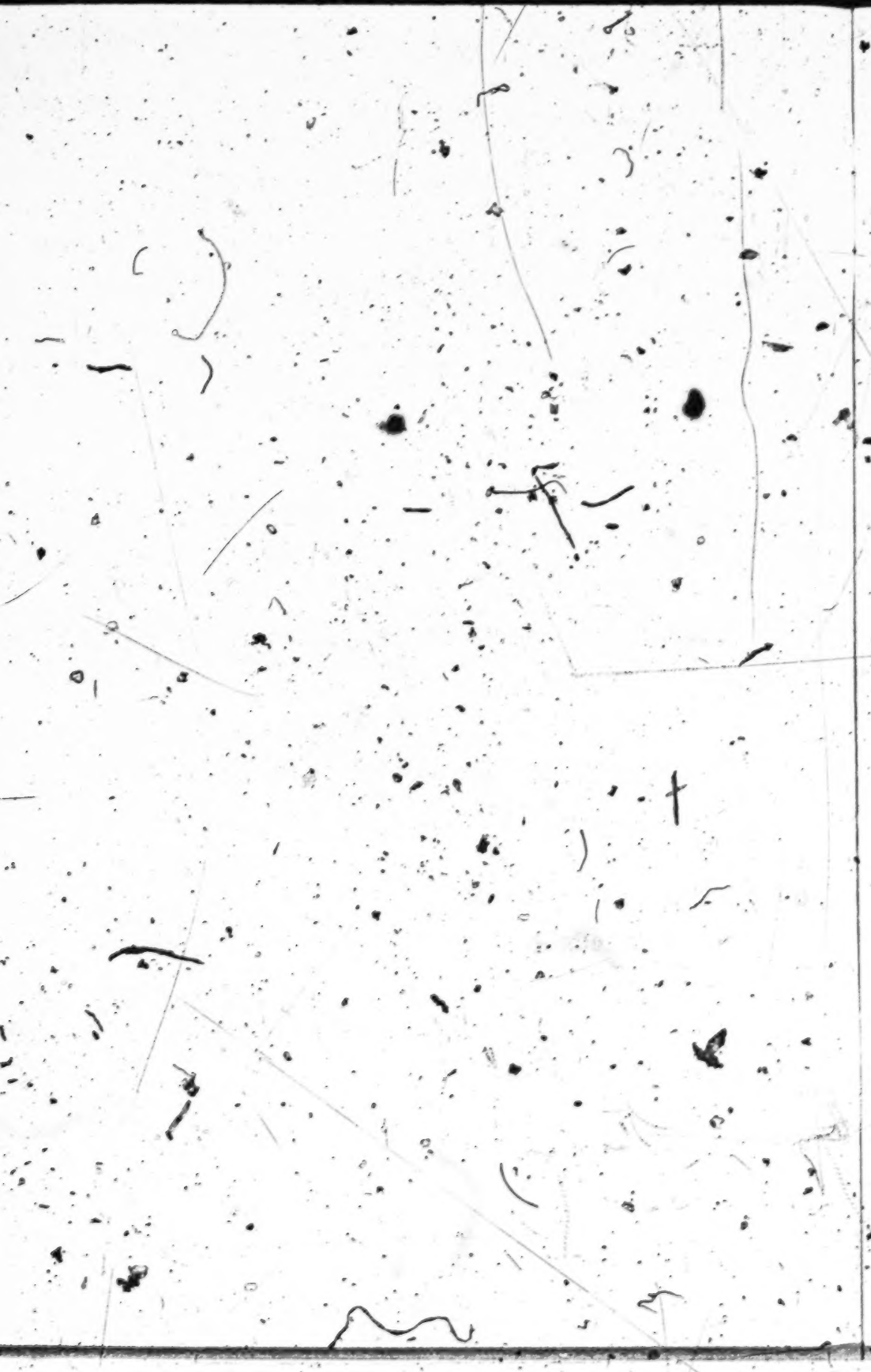


TABLE OF CONTENTS

INDEX TO CITATIONS

CASES:

STATUTES:



IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 791

RONALD L. CRANE, *Petitioner*,

v.

CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY, *Respondent*.

On Writ of Certiorari to the Supreme Court of the State of Iowa

---

MOTION OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR LEAVE TO FILE A BRIEF ON THE MERITS AS AMICUS CURIAE, AND ANNEXED BRIEF

The Railway Labor Executives' Association hereby respectfully moves the Court for leave to file the annexed brief *amicus curiae* on the merits in support of the petitioner's prayer that the judgment of the Supreme Court of Iowa in the case of *Crane* v. *Cedar Rapids and Iowa City Railway Company*, 160 N.W.2d 838, be reversed. The consent of the attorneys for petitioner has been obtained. The consent of the attorneys for the respondent was requested but refused.

I

The Railway Labor Executives' Association is a voluntary unincorporated Association located in Washington, D. C., with which are affiliated twenty-three standard national and international railroad labor organizations that are the duly authorized representatives under the Railway Labor Act of the bulk of the nation's rail employees, including the employees of respondent Cedar Rapids and Iowa City Railway Company. These organizations also represent other employees subject to the National Labor Relations Act. The names of these organizations are:

American Railway Supervisors' Association
American Train Dispatchers' Association
Brotherhood of Locomotive Firemen and Enginemen
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Brotherhood of Railroad Trainmen
Brotherhood Railway Carmen of America
Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
Brotherhood of Sleeping Car Porters
Hotel and Restaurant Employees and Bartenders International Union
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
International Organization Masters, Mates & Pilots of America
National Marine Engineers' Beneficial Association
Order of Railway Conductors and Brakemen

Railroad Yardmasters of America
Railway Employes' Department, AFL-CIO
Seafarers' International Union of North America
Sheet Metal Workers' International Association
Switchmen's Union of North America
Transportation-Communication Employes Union

This Court has heretofore recognized the Association as the proper party to appear and speak for these affiliated organizations and the member-employees. *Interstate Commerce Commission* v. *Railway Labor Executives' Association*, 315 U.S. 373 (1942); *Railway Labor Executives' Association* v. *United States*, 339 U.S. 142 (1950); *American Trucking Associations, Inc., et al.* v. *United States*, 355 U.S. 141 (1957).

II

This case concerns the interpretation and application of the Federal Safety Appliance Act (45 U.S.C.A., Sections 2 and 7), as applied to an individual covered by the statute injured while working on railroad cars belonging to respondent railroad, but who was not an employee of said railroad. The Association and individual railway labor organizations of which it is composed have a substantial interest in the issues presented by this case. Some of the organizations have members and represent employees who, like petitioner, are not employees of railroads but who are covered by the Safety Appliance Act in the performance of their work on railroad owned and operated cars. They thus have an interest in the interpretation and application of the Safety Appliance Act to such individuals. Above and beyond that, however, the Association and constituent organizations have an interest in the interpretation and application of that statute so as to

encourage strict compliance therewith by railroads since non-compliance endangers not only members of such organizations in the position of petitioner Crane, but thousands of railroad employees members of and represented by these organizations. The statistics on train accidents and injuries compiled by Federal agencies charged with responsibilities in this field and set forth in the petition for certiorari bear ample witness to the scope of this interest.

III

The petitioner is not in the same position as is the Association to speak for railroad and related labor with respect to the important questions of statutory construction before the Court in this case.

Wherefore, the Association moves the Court for leave to file the brief annexed hereto on the merits of the questions presented.

Respectfully submitted,

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington, D. C. 20005
Attorneys for Railway Labor Executives' Association

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

March, 1969

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 791

RONALD L. CRANE, *Petitioner*,

v.

CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY, *Respondent*.

On Writ of Certiorari to the Supreme Court of the State of Iowa

---

BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE

The Railway Labor Executives' Association submits this brief as *amicus curiae* in support of the position of the petitioner Ronald L. Crane in the above-entitled case that the decision and judgment of the Supreme Court of the State of Iowa, dated September 5, 1968, should be reversed.

INTEREST OF THE ASSOCIATION

The interest of the Association is set forth in the annexed motion for leave to file this brief.

ARGUMENT

This case involves a state court action by an individual to recover damages for personal injuries received when he fell from a runaway railroad box car which he was attempting to stop by applying brakes. The car involved had been delivered to the employer of petitioner, Cargill, Inc., by the appellee railroad and petitioner was engaged in spotting cars for his employer at the time of the accident. He sought to impose liability on the appellee railroad upon the basis of allegations that it had failed to equip the cars involved in the accident with automatic couplers as required by the provisions of Section 2 of the Federal Safety Appliance Act (45 U.S.C., Section 2).

The trial court permitted the appellee railroad to make the defense of contributory negligence and refused requested instructions of petitioner to the jury to the effect that a violation of the Safety Appliance Act is in itself an actionable wrong which results in absolute liability and that contributory negligence is no defense. The jury returned a verdict for the railroad. On appeal, the Supreme Court of Iowa affirmed. This Court has granted certiorari to review that decision.

Petitioner is clearly within a class of persons protected by the Federal Safety Appliance Act. The trial court so ruled and this holding was not challenged before the Iowa Supreme Court. In addition, as that court pointed out, the trial court's holding is supported

by decisions of this Court. *Shields* v. *Atlantic Coast Line R. Co.*, 350 U.S. 318; *Brady* v. *Terminal Railroad Association*, 303 U.S. 10. The Iowa Supreme Court also found that the Federal Safety Appliance Act imposes an absolute liability on a railroad carrier to equip its cars as required by statute and that failure of the safety appliance to so operate is negligence per se. However, it also found that in the absence of statutory state law to the contrary, an injured party such as petitioner, who is not an employee of the negligent railroad, is required to exercise due care for his own safety and that under Iowa law his contributory negligence is a proper defense.

This determination should be reversed for the following reasons and the statute should be interpreted as imposing absolute liability with no defense of contributory negligence for the statutory violation involved:

First, the decision results in discrimination in the application of the statute as between classes of persons protected by the statutory requirements. A railroad employee, injured by reason of the carrier's violation of the Federal Safety Appliance Act, may not be barred from recovery upon the grounds of contributory negligence, while at the same time a non-railroad employee protected by the statute is so barred. Indeed, the discrimination may extend to two different individuals engaged in working on or about the same railroad car. Congress could not have intended this discriminatory result in the application of the statute.

Second, the major purpose of the Federal Safety Appliance Act is to encourage and bring about safety in railroad operations by insuring the use of safe equipment. This purpose is defeated if individuals

such as petitioner Crane, non-railroad employees, who in the ordinary course of their employment, are required to come in contact with and work upon railroad equipment which is in an unsafe condition in violation of the provisions of the Federal Safety Appliance Act are not protected to the same extent as a carrier employee in such position. Indeed, the decision below encourages a railroad to delay putting its equipment in proper condition by knowledge that when it is in the hands of a non-carrier the railroad's potential liability for statutory violations is substantially diminished. This matter is a serious problem not only for individuals in the position of petitioner Crane but for railroad employees themselves as the data released by Federal agencies set forth at pages 23 and 24 of the petition for certiorari in this case shows that almost 2000 train accidents occurred last year in the United States as a result of defective equipment and that approximately 400 of these were attributable to coupler defects such as were involved in the present case.

Third, this Court in its prior decision in *Shields* v. *Atlantic Coast Line R. Co.*, 350 U.S. 318, has held that a non-railroad employee is protected against violations of the statute and that such violations result in absolute liability to him. This Court spoke as follows in that case, (page 325):

> "There is no merit in respondent's contention that, since petitioner is not one of its employees, no duty is owed him under § 2 of the Act. Having been upon the dome running board for the purpose of unloading the car, he was a member of one class for whose benefit that device is a safety appliance under the statute. As to him, the violation of the statute must therefore result in absolute liability. Coray v Southern Pacific Co, 335 US 520, 93 L ed 208, 69 S Ct 275; Brady v Terminal R. Asso. 303

US 10, 82 L ed 614, 58 S Ct 426; Fairport, P. & E. R. Co. v Meredith, 292 US 589, 78 L ed 1446, 54 S Ct 826, 35 NCCA 388; Louisville & N. R. Co. v Layton, 243 US 617, 61 L ed 931, 37 S Ct 456."

Although, as the decision of the Supreme Court of Iowa in the present case states, the specific issue of contributory negligence was not before this Court in the *Shields* case and is not mentioned in the opinion, the holding that the violation of the Federal Safety Appliance Act injuring a non-railroad employee creates absolute liability toward such employee would clearly seem to encompass the issue of whether or not the liability for the carrier's violation can be defeated by the application of the principle of contributory negligence.

CONCLUSION

It is respectfully submitted that the Court should reverse the decision and judgment of the Supreme Court of Iowa.

Respectfully submitted,

EDWARD J. HICKEY, JR.
JAMES L. HIGHSAW, JR.
620 Tower Building
Washington, D. C. 20005
Attorneys for Railway Labor Executives' Association

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

March, 1969